

POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

PUGET SOUNDKEEPER ALLIANCE;)
WASTE ACTION PROJECT;)
WASHINGTON PUBLIC EMPLOYEES) PCHB 02-162
FOR ENVIRONMENTAL)
RESPONSIBILITY; RESOURCES FOR) Consolidated with
SUSTAINABLE COMMUNITIES;)
CITIZENS FOR A HEALTHY BAY; and)
WASHINGTON ENVIRONMENTAL)
BALANCE, INC.;)
and)
THE BOEING COMPANY;) PCHB 02-163
and) and
SNOHOMISH COUNTY;) PCHB 02-164
Appellants,) PREHEARING ORDER
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY;)
Respondent.)

On September 20, 2002, Puget Soundkeeper Alliance, Waste Action Project, Washington Public Employees for Environmental Responsibility, Resources for Sustainable Communities, Citizens for a Healthy Bay and Washington Environmental Balance, Inc. ("Environmental Groups"); the Boeing Company ("Boeing"); and Snohomish County filed appeals with the

PRE-HEARING ORDER
PCHB 02-162, 02-163 & 02-164

1 Pollution Control Hearings Board ("Board"), contesting the Department of Ecology's
2 ("Ecology") issuance of the Industrial Stormwater General Permit.

3 A telephonic pre-hearing conference was held on October 11, 2002. Robert V. Jensen,
4 FAX (360) 438-7699, presided for the board.

5 Present for the parties:

6 Appellants:

7 Richard A. Smith, of Smith & Lowney, attorneys for the Environmental
8 Groups, FAX (206) 860-4187
9 Peter E. Hapke, General Counsel for Boeing, FAX (206) 655-5076
10 Pamela Krueger, Boeing
11 Millie M. Judge, Deputy Prosecuting Attorney, Snohomish County FAX
(425) 388-6333
12 Courtney E. Flora, Deputy Prosecuting Attorney, Snohomish County
13 Sean K. Howe, Snohomish County

14 Respondent:

15 Ronald L. Lavigne, Assistant Attorney General, Ecology, FAX (360) 586-
16 6751

17 Based on the conference, the following pre-hearing order is entered:

18 I. HEARING

19 The hearing has been set for Monday, June 23 through Friday, June 27, 2003, at 9:00
20 a.m., at the Board's Hearing Room in Lacey, Washington. *tl*

21 The parties shall file with the board a joint status report, setting forth settlement
possibilities in the case, by Friday, January 17, 2003. *tl*

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1 11. Are the permit fees established for the permit lawful?

2 Boeing requested the addition of an issue, asking whether Ecology erred in issuing the
3 Industrial General Stormwater Permit, by requiring permittees to comply with the monitoring
4 requirements for waters listed as impaired under Section 303(d), after the effective date of the
5 General Permit. This issue was not listed by Boeing, nor any other party in its prehearing list of
6 legal issues. Both Ecology and the Environmental Groups objected to the inclusion of this new
7 issue. The presiding officer sustained the objection.

8 Snohomish County raised various constitutional issues in its prehearing list of issues.
9 The presiding officer declined to include them in the prehearing order, because the Board does
10 not generally have jurisdiction over such issues.

11 III. WITNESSES

12 Appellants:

13 Environmental Groups:

- 14 1. Keith Johnson, Ecology
15 2. Bill Moore, Ecology
16 3. Melody Selby, Ecology
17 4. Megan White, Ecology
18 5. Marc Pacifico, Ecology
19 6. Mark Kaufman, Ecology
20 7. Ron Devitt, Ecology
21 8. Sean Callahan, Ecology

Boeing:

1. Odette Schindler
Boeing Commercial Airplane Group
PO Box 3707, Mail Code 5R-14
Seattle, WA 98124-2207

- 1 (253) 931-6837
2. Doris Turner
Boeing Commercial Airplane Group
PO box 3707, Mail Code 63-41
Seattle, WA 981224-2207
(425) 965-2703
3. Charles Keller
Boeing Commercial Airplane Group
PO Box 3707, Mail Code 1W-12
Seattle, WA 98124-2207
(206) 655-1096
4. Alan Sugino
Boeing Commercial Airplane Group
PO Box 3707, Mail Code 0K-FP
Seattle, WA 98124-2207
(425) 266-8173
5. Frank Migaiolo
Boeing Commercial Airplane Group
PO Box 3707, Mail Code 0K-FP
Seattle, WA 98124-2207
(425) 342-3360
6. Michael Verhaar
Boeing Commercial Airplane Group
PO Box 3707, Mail Code 63-41
Seattle, WA 98124-2207
(425) 237-9928
7. Edward Cierbiej
Boeing Commercial Airplane Group
PO Box 3707, Mail Code 5R-14
Seattle, WA 98124-2207
(253) 931-3734, or (425) 351-7223
8. Anthony Richter
Boeing Shared Services Group
PO Box 3707, MC 3U-67
Seattle, WA 98124-2207
(253) 657-9720
9. Fred Urben
Boeing Shared Services Group
PO Box 3707, MC 5R-15
Seattle, WA 98124-2207
(253) 931-3545

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2 Snohomish County:

- 3 1. Lisa Austin, Ecology
4 2. R. W. Beck, Consulting Engineers
5 3. Tom Fitzimmons, Director, Ecology
6 4. Peter Hahn, Director, Snohomish County Public Works
7 5. Willian Lief, Snohomish County Public Works -- Surface Water
8 Management Division
9 6. Bill Moore, Ecology
10 7. Gary Nelson, Chair, Snohomish County Council
11 8. Ed O'Brien, Ecology
12 9. Andrew Rardin, Airport Environmental Coordinator, Paine Field
13 Airport
14 10. Roy Scalf, Sr., Snohomish County Public Works -- Road
15 Maintenance Division
16 11. Dave Waggoner, Director, Paine Field Airport
17 12. Megan White, Ecology
18 13. Jim Wilson, Snohomish County Public Works -- Solid Waste
19 Division

20 Respondent:

- 21 1. Keith Johnson
2. Bill Moore

22 Final lists of witnesses shall be served on the parties and filed with the board by **Friday, April 4,**
23 **2003.** Telefax is allowed, provided the original is mailed the same day. The parties are
24 encouraged to stipulate not duplicating witness names on more than one party's list. Otherwise,
25 a party wishing to call a witness listed by another party shall include that witness' name on its
26 final witness list. The party calling a witness has the responsibility to ensure his/her attendance
27 at the hearing.

28 A witness' expertise shall be established by résumé offered as an exhibit.

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IV. EXHIBITS

Appellants

Environmental Groups:

- AS-1 The Industrial Stormwater General Permit
- AS-2 Fact Sheet for Industrial Stormwater General Permit
- AS-3 Responses to comments for draft Industrial Stormwater General Permit
- AS-4 Receiving water information and Declaration of Mixing Zone Form

Boeing:

- AB-1 The Permit
- AB-2 EPA's Multi-Sector General Industrial Stormwater Permit
- AB-3 Storm Water Pollution Prevention Plans from Puget Sound Boeing facilities
- AB-4 The Uniform Fire Code, local sanitary sewer ordinances and other laws, regulations agreements, and contracts, which impact "illicit discharges" at Boeing's Puget Sound facilities
- AB-5 Cost analyses of compliance with the "illicit Discharge" provisions of the Permit at Boeing's Puget Sound facilities

1 Snohomish County:

- 2 AS-1 Ecology's Industrial Stormwater General Permit, dated August 21,
3 2002 and Fact Sheet
4 AS-2 Paine Field Stormwater Pollution Prevention Plan ("SWPPP")
5 AS-3 Cathcart SWPPP
6 AS-4 Southwest Transfer Station SWPPP
7 AS-5 Everett Transfer Station SWPPP
8 AS-6 Multi-Sector General Permit published by EPA, at Fed. Reg. Vol.
9 65, No. 210, October 30, 2000 (pp. 63759-60)
10 AS-7 Paine Field aerial photographs
11 AS-8 Snohomish River TMDL documents

12 Respondent:

- 13 R-1 Industrial Stormwater General Permit and Fact Sheet
14 R-2 Comments regarding the General Permit and Ecology's response to the
15 comments

16 Final exhibit lists shall be served on the parties and filed with the board by **Friday, May**
17 **2, 2003.** Telefax is allowed, provided the original is mailed the same day. The parties shall
18 exchange exhibits by **Friday, May 9, 2003.** The parties shall endeavor to stipulate in advance of
19 hearing to exhibits' authenticity and admissibility. Parties are encouraged to offer only those
20 exhibits, or portions they intend to rely upon in their case. If the parties do not stipulate to the
21 admissibility of exhibits, those exhibits not agreed to should be offered through a witness at the
22 hearing.

23 When meeting with the presiding officer on the first hearing day, each party shall have
24 available for the board, an original and (3) three copies of its exhibits and exhibit lists, which
25 shall identify those admissible by stipulation of the parties. An original or one copy of any
26 exhibit, which cannot be conveniently copied due to size, bulk, reproduction difficulty, etc., must

1 be available for the board at the hearing. A party shall offer only those pages of a multi-page
2 document upon which it relies and refers to in testimony, statement, or argument.

3 Each exhibit shall be pre-marked by tab for identification (AP-1, AB-1, AS-1. etc., for
4 appellants; and R-1, etc., for respondent, respectively) and so identified on the exhibit lists. The
5 number given to an exhibit does not limit the order of its introduction at hearing.

6 The parties are encouraged to stipulate not duplicating exhibits on more than one party's
7 list. Otherwise, a party wishing to call a witness listed by another party shall include that exhibit
8 on its final exhibit list.

9 V. DISCOVERY

10 Discovery deadline: Friday, March 14, 2003, ^{it}except for new witnesses listed on the
11 final witness list. The discovery deadline for those witnesses shall be Friday, April 25. ^{it}

12 Any party filing a discovery motion shall also file a proposed order and shall accompany
13 such filing with an affidavit reciting efforts to resolve the discovery dispute.

14 An original and (1) one copy of discovery motions and supporting documents must be
15 filed with the board.

16 Depositions, interrogatories, requests for production or inspection, requests for admission
17 and the responses shall not be filed. It is the initiating party's responsibility to maintain the
18 original together with answers to interrogatories and to make them available for proceedings.

19 VI. DISPOSITIVE MOTIONS

20 Any motion, which would be dispositive of the case or any legal issue shall be filed and
21 served by **Monday, March 31, 2003.** ^{it} An original and (3) three copies of motion pleadings shall

1 be filed with the board and served on opposing parties. Opposing parties shall have until
2 **Monday, April 14**, or 10 calendar days, from the date of receipt of the motion, to file and serve
3 a response, whichever is earlier. Reply is due **Monday, April 21**, or 7 days after receipt of the
4 response, whichever is earlier.

5 If the parties attach any documents to affidavits or declarations, they shall file only those
6 pages of said documents upon which they rely and refer to in their written argument.

7 Briefs shall not exceed 25 pages, unless by order of the presiding officer. If a citation is
8 made to a case other than aboard case, or a Washington State reported decision, a complete copy
9 of the referenced case must be filed and served. Such cases do not count as part of the brief page
10 limitation.

11 The board will consider the argument on the record, unless a party requests and the
12 presiding officer sets a hearing on the motion under WAC 371-08-450. At the parties' request,
13 argument may be held by telephone with the parties arranging the connections.

14 Note: Service and filing of motions, answer, and reply (if 10 pages or less) may be by
15 Telefax; provided the original and required number of copies are mailed the same day.

16 VII. BRIEFS

17 Pre-hearing briefs are optional. If submitted, they shall be filed and served no later than
18 **Monday, June 16, 2003**, with original and (3) three copies for the board. Telefax of 10 pages or
19 less allowed, provided the original is mailed the same day.

20 Briefs shall not exceed 25 pages, unless by order of the presiding officer. If a citation is
21 made to a case other than a Board or Washington State reported decision, a complete copy of the

1 referenced case must be filed and served. Such cases do not count as part of the brief page
2 limitation.

3 VIII. COMMUNICATION

4 All correspondence and filings with the board shall be sent to the attention of the
5 presiding officer with copies sent simultaneously to all other parties.

6 Parties are encouraged to engage in mediation or settlement discussions with each other
7 at any time without the presence of the presiding officer of the board or with his/her presence if
8 all parties and the presiding officer agree. If the parties wish to engage the services of an
9 administrative appeals judge for mediation, they shall contact Phyllis Macleod, Administrative
10 Appeals judge, in writing at the board's office.

11 Telefax may be used to communicate with the board and the parties, limited to 10 pages
12 in length.


13 IX. MISCELLANEOUS

14 "Filed" and "served" mean the date received by the board.

15 The parties may, by agreement, modify recited dates without further notice, except for
16 paragraphs I, VI and VII.

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SO ORDERED this 15th day of October 2002.


ROBERT V. JENSEN, presiding

PRE-HEARING ORDER
PCHB 02-162, 02-163 & 02-164